

MONTANA TRANSPORTATION COMMISSION

February 19, 2004 – Business meeting

MDT Auditorium, Helena MT

In attendance:

Shiell Anderson, Commission Chair; Nancy Espy, Commission Vice Chair; Kevin Howlett, Commissioner; Dan Rice, Commissioner; Tim Reardon, Chief Counsel; Jim Currie, Deputy Director; Dave Galt, Director of Transportation; Sandra Straehl, Rail, Transit & Planning Administrator; Joel Marshik, Chief Engineer; Janice Weingart Brown, FHWA Division Administrator; and Mike Duman, Assistant FHWA Division Administrator.

=> indicates follow-up is needed

Please note: the complete recorded minutes are available for review on the commission's website at http://www.mdt.state.mt.us/trans_comm/. Alternately, you may request a compact disc from the transportation secretary at (406) 444-7200 or ldemont@state.mt.us. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

Summary minutes

1. Recording commission meetings

Recording the minutes will require a more formal protocol. Chairman Anderson asked that speakers please wait for his acknowledgement before speaking, and then state their name before proceeding.

2. WASHTO

The commissioners are invited to participate in the WASHTO annual meeting scheduled for July 18-21 in Kalispell. => Galt requested commissioners let Lorelle know of their decision next week.

3. Update on Battlefield-east project

Hal Fuglevand from E. H. Oftedal & Sons, Inc. provided an update on his company's value engineering (VE) proposal for the *Battlefield-east* project. Their original bid was \$15,196,471.43 and their second VE proposal bid is expected to be \$10,447,351.92 (the number are currently being checked). The difference will be split between MDT and the contractor. In addition to the cost savings, Oftedal's proposal expects to decrease inconvenience to the traveling public.

Espy moved to adopt the modified changes as presented by Oftedal and approve the project. Howlett seconded. All commissioners present voted aye.

4. US 93 corridor preservation – railroad property acquisition in Polson

Howlett moved to adopt staff's recommendations to ratify the agreement with Montana Rail Link, Inc. and designate the abandoned railroad right-of-way as a public highway to be placed in the primary highway system for the allocation of state and federal funds; Espy seconded. All commissioners present voted aye.

5. Speed limits

All recommendations listed below have concurrence from the appropriate county.

a. *Secondary 348 (Philipsburg West)*

- validate 55 mph interim speed limit
- approve a final speed zone of 65 mph beginning at the intersection with MT 1 continuing west to the end of the secondary route designation at milepost 14.01.

b. *Secondary 233 (St. Joe Road)*

- validate 55 mph interim speed limit
- approve a final speed limit of 55 mph beginning at the pavement-gravel transition (milepost 21.6) and continuing north to the end of the route at milepost 30.6 (an approximate distance of 9 miles.)

c. *Secondary 430 (Canyon Ferry Road East)*

- validate 60 mph interim speed limit
- approve a speed limit of 65 mph beginning 100 feet east of Lake Helena Drive and continuing east to milepost 9.05 (an approximate distance of 4.9 miles)
- approve a speed limit of 50 mph beginning at milepost 9.05 continuing east to the intersection with Secondary 284 (an approximate distance of 0.25 miles)
- approve a "reduced speed 50" sign in advance of the 50mph speed zone.

d. *Secondary 430 (Canyon Ferry Road West)*

- approve a 60 mph speed limit beginning where Canyon Ferry Road departs from York Road and proceeds eastward for approximately 1.5 miles (the section recently reconstructed)
- approve the speed limit along the remainder of Canyon Ferry Road from the Prickly Pear Creek bridge to Lake Helena Drive remaining at 55 mph until the road is reconstructed and safety is improved

e. *Secondary 224 (Joplin)*

- maintain statutory 25 mph speed limit for the urban district
- add transition zones of 35 mph from the intersection with US 2 north for approximately 1,900 feet
- add 45 mph transition zone from 100 feet north of the intersection with 6th Street continuing north approximately 2,000 feet

f. *Secondary 544 (Biddle to Boyes)*

- validate 55 mph interim speed limit
- approve a 55 mph speed limit beginning at the intersection with MT 59 continuing east and then north to the end of the route at the intersection with US 212 (an approximate distance of 32.5 miles)

g. *Secondary 398 (Broadus North)*

- validate 45 mph interim speed limit

- approve a 50 mph speed limit beginning at the intersection with US 212 (milepost 0) continuing northeast to the end of the secondary route designation (approximately 7.8 miles)

Espy moved to adopt the speed limits as recommended by staff. Rice seconded. All commissioners present voted aye.

6. OPI summary

The overall performance index (OPI) is a tool used to show the overall health of the various highway systems. The graphs show the improvement resulting from the increased funding provided by TEA-21. Also, during this time period, there was a change in the management of many of the roads in the secondary system (from county to state-maintained).

7. Wetland feasibility study

The owner of the proposed wetland mitigation site near Martinsdale initiated the offer as part of an effort to use the land for conservation purposes. No costs are available at this time, therefore the request for the feasibility study. Larry Urban noted that we are in a deficit in watershed #10, the Mussellshell drainage. We have no other wetland projects proposed for the drainage. Howlett moved to approve staff's recommendation; Rice seconded. All commissioners present voted aye.

8. Addition of seven projects to the pavement preservation projects

<u>Project Name</u>	<u>Scope</u>	<u>Project Cost</u>
South of Bozeman-South	Seal & Cover	\$187,000
Hays – Ft Belknap	Overlay, Seal & Cover	\$2,095,000
Rudyard-Gilford	Overlay, Seal & Cover	\$1,601,000
3 rd St NW - GTF	Mill, Fill, Seal & Cover	\$790,000
57 th -2 nd Ave N/10 th Ave S-GTF	Mill, Fill, Seal & Cover	\$340,000
N of Browning-North	Overlay, Seal & Cover	\$1,355,000
Pinehills Intch-West	Mill and Overlay	\$978,000
		<u>\$7,346,000</u>

Espy moved to approve the addition of the projects to the program for development and delivery in 2005; Rice seconded. All commissioners present voted aye. All the projects will be let to bid.

Liquidated damages

Liquidated damages are assessed to cover MDT's construction engineering (CE) costs which accrue regardless of whether the contractor is working or not. The costs are based on historical data and average costs for similar projects.

a) + Ties – Polson N project, NH 5-2(117)61

Chris Rasmussen from JTL disputed the liquidated damages being assessed on the project. The commission made no motion therefore the liquidated damage assessment stands.

b) Plentywood West STPP 22-2(15)30

SK Construction overran the contract time by one day at cost of \$2,303. The commission made no motion therefore the liquidated damage assessment stands.

c) *1 mile E of Helena STPHS-STPS-STPU 25(27)*

SK Construction overran the contract time by one day at a cost of \$1,397. The commission made no motion therefore the liquidated damage assessment stands.

9. Request for engineering study – Daly Street (U1801 from Main St to 2nd St in Walkerville)

An engineering study will help determine the extent of the work required and financial feasibility for future improvements. Commissioner Howlett made it clear that the feasibility study does not imply approval of the project. That will be contingent on other factors, primarily funding. Director Galt said we would reinforce this concept in the department's public relations materials related to this study. Rice moved to approve staff's recommendation to approve the addition of an engineering study for the purposes of making a recommendation, contingent on funding availability, for the future improvement of this portion of Daly Street; Espy seconded. All commissioners present voted aye.

10. STP-urban projects in Sidney

Straehl distributed a copy of a letter from the City of Sidney affirming their commitment to cover any overrun of project costs resulting from using their remaining urban balance on the two proposed projects: U 10405 (Lincoln Avenue – Central to 6th St SW for a mill, overlay and installation of curb and gutter) and U 10406 (Main St-4th Ave SE to 9th Ave SE for a mill, overlay, and installation of ADA handicap ramps and valley gutters). Espy moved to approve the addition of the two projects to the program; Rice seconded. All commissioners present voted aye.

11. Signal project in Billings at intersection of S Billings Blvd & Midland Road

Espy moved to add the project to the program and delegate authority to let, award, and administer the contract to the City of Billings pending concurrence of the chief engineer; Rice seconded. All commissioners present voted aye.

12. Enhancement projects on MDT right-of-way

- a. Bicycle/pedestrian path using the abandoned Milwaukee Railroad between Reserve Street and Russell Street in Missoula
- b. Bicycle/pedestrian path from Lakeside to Somers in Flathead County

Straehl mentioned that the community supports both of these proposed enhancement projects. There has been no negative feedback from adjacent landowners. Some of the monies will be used to acquire the necessary easements and right-of-way. The local governments will hold those in public ownership prior to constructing the facilities. Howlett moved to approve the enhancement projects; Espy seconded. All commissioners present voted aye.

13. Bridge projects on the Secondary Highway system

Rice moved to allow Hill County and Sweet Grass County to make improvements as proposed to Wanke Bridge and Howie Road Bridge respectively using Treasure State Endowment funds pending concurrence on design and construction standards from the chief engineer; Espy seconded. All commissioners present voted aye.

14. Changes to previously approved bridge projects

- a. *Big Muddy Creek – Bynum*
- b. *Big Powder River 3 km east of Powderville*

Espy moved to accept the changes recommended by staff; Howlett seconded. It was clarified that the cost-benefit ratio applies to the spending of hazard elimination funds only. All commissioners present voted aye.

15. Emergency relief project – Milk River bridge west of Chinook

Straehl provided an amended agenda write-up showing recently updated cost estimates. Staff requested the commission approve the interim use of NH funding to make repairs to the Milk River Bridge in the amount of \$3,677,176, and to make application to the Federal Highway Administration for emergency relief funds in the same amount.

Currie confirmed we won't make any adjustments to our letting lists, however, given the way the emergency funding process works, there *is* potential for other NH system projects to be delayed until the federal reimbursement is received. (Emergency relief funds are appropriated annually by Congress. FHWA approves funding requests as needs arise. Congress often doesn't appropriate sufficient funds therefore the exact time frame of the money arriving is unknown. States must therefore use other funds until the federal money arrives.)

Staff requested the commission delegate authority to the chief engineer to award the project, the reason being it takes a week to ten days out of the process at a critical time in the year (spawning season by resident fish of the river); nothing else changes. Currie clarified that this does not set precedent; the commission has given similar authority in the past for ER projects.

Espy moved to adopt staff's recommendation to apply for \$3,677,176 in federal emergency relief funds with the state matching funds amounting to \$531,524 for a total cost of \$4,208,700, to use NH funds on an interim basis, and to delegate authority to the chief engineer to award the project; Rice seconded. All commissioners present voted aye.

16. Big Sky Spur project

This project exceeded the \$50,000 safety project award limit and should therefore have received formal commission approval prior to award. Howlett noted that dollar amounts do change over time and the commission should exercise some flexibility. The project has already been awarded. Rice moved to ratify the \$350 over the \$50,000 awarded; Espy seconded. Anderson voted aye with the endorsement that this should not happen again. Espy noted the commission accepts staff's apology. => Galt will look into this and follow-up with the commission.

17. Process for revocation of motor carrier permit privileges

The department *may* (according to statute) issue permits to motor carriers whose vehicles are over height, weight and/or length. Details are laid out in the administrative rules of Montana (ARM), including guidelines for penalties (fines and withholding/confiscating permits) for initial and some repeated offences but not for a carrier with egregious and

numerous violations. The particular carrier that precipitated this discussion is not in business anymore but the issue of putting a policy in place remains.

The draft policy presented allows the department maximum flexibility to revoke permit privileges and carriers to appeal that decision to the commission. It is specifically non-finite to allow for case-by-case evaluation of the many factors involved in such a decision, e.g. number of trips compared to number and type of violations. Espy emphasized the safety of the traveling public and not waiting too long to address problem carriers. Reardon clarified that this policy would be to provide due process for the carrier.

Anderson recommended the policy be amended to indicate the revocation would be permanent. Galt said he has asked Drew Livesay to put together a list of offenders, the primary of which are housemovers, to give the commission more information in terms of frequency and type of violations. The commission moved to delay action until further information is available, probably next meeting. => Follow-up on future agenda.

18. Certificates of completion

The commission's approval is needed to complete construction contracts. The commission had previously requested no longer than six months between completion of work and the date accepted by the director (which signifies completion of follow-up paperwork). Marshik explained any delays longer than six months and affirmed internal process improvement is resulting from this practice. Rice moved to accept the certificates of completion; Espy seconded. All commissioners present voted aye.

19. Change orders

- Marshik advised the commission that a large change order is coming up on the *Montana City-South of Montana City* project in amount of approximately \$250,000. After the project was let, we decided it would be most efficient to combine this job with planned bridge safety work rather than having it go as a separate project.
- Commissioner Anderson questioned the amount on Bull Lake project. Marshik confirmed that we do scrutinize claims that come in and have processes (including daily field documentation) set up to help prevent approval of false claims. Claims originate at the district level and are typically elevated fairly quickly to MDT headquarters staff. We had an audit in the last year or two of this process and to see how we could improve. => Galt asked Demont to get copy of the claims audit to the commissioners.
- Anderson questioned where the risk lies in traffic control. Wissinger said it rests with the department via the rate schedule. That's one of the problems with that method, although that chances are good the contractor would incur liquidated damages and we would recoup our costs. We are moving toward lump sum and including sequencing of operations in our contracts.
- Espy moved to accept the work orders as recommended. Rice moved to accept with exception of Albion N&S (his company was on project for a short time and concurred that the sequencing was an issue). All commissioners present voted aye. Espy moved to accept the work order for Albion; seconded by Howlett. Espy, Howlett, and Anderson aye; rice abstained.

21. Commission discussion and public comment

Guidelines for award of bids

Galt – we have invoked this policy twice recently and came under a lot of criticism. Am I incorrect in using the policy to direct the contractor to use the commission to appeal the decision, when we have a policy that governs the guidelines for award? It appears to put the commission in a position of violating its own policy. We have already as a department put in time and money to meet with the contractor to discuss the bid and attempt to resolve the issue. Reardon – without the department's approval of the contractor's bid, FHWA is not going to concur. In the ten years I've been here, I've yet to see the commission award a project without federal concurrence.

Howlett commented that the commissioners are political appointees and will take factors beyond the technical into account, e.g. sociological and economic impacts. Espy thought the commission should abide by their policies. Anderson acknowledged the public relations aspect involved in there being a possibility for contractors to come before the commission but realized there is time and money involved in so doing. Rice weighed in on keeping the status quo which allows the commission to be used as a "court of last resort".

Galt – I think the policy "as is" does the contractor does an injustice. Anderson – the policy can give false hope. Perhaps the policy should be revised to indicate there is a very slim hope for the commission to overturn the department's position. Reardon suggested revising the policy to limit contractor's presentation of evidence to the department; no new details may be raised to the commission. Duman concurred with department. Reardon – it may be dangerous to divulge our individual item estimates because it could put us in a negotiating mode, which we want to avoid. Espy affirmed the right of contractors to appear before the commission. => Anderson suggested coming up with tighter guidelines and submitting a draft policy at the next meeting.

Announcement

Currie described the work and costs associated with winter road maintenance during the storm that took place between December 26, 2003 and January 4, 2004. In 32,092 hours, staff plowed 585,246 lane miles at a cost of \$2,338,319. During that time, there were 139,678 calls to the 511 traveler information number.

DELEGATION

North Meridian Road in Kalispell

Currie – costs have escalated significantly for this project. Staff has put together several options for the commission's consideration. Please note that the biggest travel problems would be addressed by phase I, not phase II. Also, as local governments accrue funds, project costs are growing via inflation.

Jim Hanz, public works director of Kalispell, distributed color copies of the map and resolutions/letters of support.

Currie – this is symptomatic of a bigger issue: the need for more funding to the urban program.

Straehl – in many of the urban areas, developers partner with local government to help raise the necessary funds. What has Kalispell done to explore that option? Chris Kukulski, Kalispell city manager, indicated state statute would not allow it, even if city voters moved to

require impact fees similar to what Bozeman has required. Howlett expressed sympathy for a difficult situation and emphasized that growth in western Montana is overtaking funding to address the needs.

Rice – could it be bonded? Currie – yes. We have a statutory capacity of \$150 million. We have bonded \$100 million for the Evaro-Polson job, but the current engineers' estimate is \$127 million. Rice – could the state bond on behalf of Kalispell and then repay it with state urban funds? Straehl suggested that several urban areas in the state might be interested in accessing the state's bonding capacity and that would raise a larger question of how to distribute this limited authority. The Federal-aid revenue stream is considered "golden" and would be a good source for bond repayment. Straehl suggested the City use its bonding authority and then use future urban allocations as the revenue stream to repay it, if this could be worked out. Kukulski appreciated the option and will pursue it. Currie expressed a willingness to work with the city and FHWA to work this out. => Anderson requested more information on these options and what they would mean for other communities and will put it on the next commission agenda. Currie designated Straehl as the point person for the bonding issue research.

DELEGATION

City of Laurel

Ken Olson, Mayor of Laurel, and Steve Klotz, Public Works Director, addressed the commission and reconfirmed the need for additional money to be directed towards the urban system.

Currie – hopefully the reauthorized transportation bill will contain significant increases for the state of Montana, which will put us in a position to address needs on the urban system.

Letting lists

Marshik discussed the letting lists. Since those were published, there have already been changes. *Meriwether-east* has been pulled from the February letting and moved to the April letting. Espy moved to accept the letting lists; Rice seconded. All commissioners present voted aye.

DELEGATION

Swamp Creek

Jim Walther, preconstruction engineer, delivered a history of the project.

Currie – we will have Swamp Creek as a backup project so if other projects slip, those funds can be used toward building Swamp Creek once design is ready (anticipated in the next 18 months). This project would be eligible for redistribution (grab bag) funds. Funding through a federal earmark is another option and perhaps the congressional delegation could help. We do have a seal and cover going out for advertisement in the next few weeks and should be constructed this spring to help hold this road together.

Commissioner Rita Windom brought forth copies of additional letters of support for the project. She emphasized the common thread is safety. She presented two videos with windshield time showing the condition of the road and the ride. Several residents of the Swamp Creek area, emergency responders, and elected officials made comments for the record and showed photos of bridges, pavement conditions, the narrowness of the road and

steep drop-offs. Comments expressed frustration about the length of time taken in project development, concern about safety, and concern about the impact such a poor road has on Libby's potential for economic development.

21. Commission discussion and public comment (continued)

Executive Director Cary Hegreberg delivered an update from the Montana Contractors' Association. The reauthorization of the federal transportation bill bodes well for Montana and our congressional delegation is doing a great job for us. We are working closely with the department on "design-build" and pilot projects are underway. The value-engineering proposal you approved this morning tells of things to come. We are going to join with the department to finance public safety announcements on work zone safety this summer. Although the item was rescinded from the agenda, I would like to offer comments regarding the Morning Star project that was pulled. Two basic concerns about the information as it was put forward: 1) competitive bidding and 2) the "rez factor" referred to by Carrie Braine in her fact sheet to the commission. We would like to see a policy statement from the commission that supports competitive bidding no matter the location. Allowing the private sector to compete with one another is the way the state gets the best "bang for their buck" and ensures cost-efficiency and quality control. I would like more information about the "rez factor" referred to by Carrie Braine.

Howlett – I called the Northern Cheyenne and asked them to pull this agenda item. We need more information about what is involved in doing business on tribal lands. This is not an issue that is going to go away and I think we need to find a way to "win-win." We need more dialog and information.

Representative Jim Keane affirmed organized labor's efforts toward reauthorization of the federal transportation bill. He expressed a belief that costs of building a road vary by location. Building on a reservation is like building in a foreign country and the price is different. We do need to keep the competitive bid as part of the process though.

Director Galt conveyed a message from Senator Max Baucus that he is committed to getting a good highway bill for the state of Montana and will be at the conference table between the Senate and the House working toward that end.

=> Anderson requested staff draft a letter from the commission urging Congress to maintain a high level of funding.

Upcoming meeting schedule

- Wednesday April 14 – Butte
- Early June – exact date and location to be determined
- Morning meeting on Thursday July 22 following WASHTO

Discussions related to Swamp Creek

Rice wanted to go on record on behalf of a woman who had intended to testify but couldn't – she lost her son last year to an accident on this stretch of road.

Howlett inquired as to the possibility of moving the project from the swampy area up the hill. Galt – it would be interesting, but would mean redesign which would mean further delay. Marshik – this was looked at. People didn't want scars on the hillside and there were landowner issues. We have the right-of-way already bought and we intend to stick within the right-of-way. In regards to the bridge issue raised, the bridges on US 2 in that area are inspected quite regularly. They are all going to be replaced as part of the Swamp Creek project, which is \$20 million and growing. A hillside project would probably have a comparable cost. We deserved the criticism we received today. We would like to continue on the course we're on. Design will be complete in 2005.

Transition

The commissioners didn't identify any areas of need. Things seem to be going well.

The meeting adjourned at 4:09pm.

Shiell Anderson, Chairman
Montana Transportation Commission

David A. Galt, Director
Montana Department of Transportation

Lorelle Demont, Secretary
Montana Transportation Commission